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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/696,854	10/26/00	DUFFIN	G OB007ML-1

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EXAMINER

FOELAK, M

ART UNIT	PAPER NUMBER
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1711

DATE MAILED:

03/13/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/696,854

Applicant(s)
Duffin et al

Examiner
Morton Foelak

Group Art Unit
1711



- ☐ Responsive to communication(s) filed on _____.
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

- ☒ Claim(s) 1-14 is/are pending in the application.
- Of the above, claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-14 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claims _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- ☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☒ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) _____.
- ☒ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

- ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- ☐ Notice of References Cited, PTO-892
- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 5
- ☐ Interview Summary, PTO-413
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-14 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Douglas, Peterson et al, Hanley et al '133 or Hanley et al '428.

Patentees all disclose a foamable composition comprising a modified ethylene copolymer, a hydrazide blowing agent, hydrocarbon resin and a sulfur containing curing agent. While the Hanley et al patents do not specifically call for the use of a sulfur containing curing agent the blowing agents employed therein i.e. the sulfonylhydrazides would have both a foaming and curing effect on the ethylenic polymers employed in their compositions. It would also appear that the ionomers employed in the Hanley et al patents would read on "substantially free" as defined at the bottom of page 7 of the instant specification,

It has been held that where applicant claims a composition in terms of function, property or characteristic where said function is not explicitly shown by the reference and where the examiner has explained why the function, property or characteristic is considered inherent in the prior art, it is appropriate for the examiner to make a rejection under both the applicable section of 35 USC 102 and 35 USC 103 such that the burden is placed upon the applicant to provide clear evidence that the respective

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compositions do in fact differ. *In re Best*, 195 USPQ 430, 433 (CCPA 1977); *In re Fitzgerald et al.*, 205 USPQ 594.

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

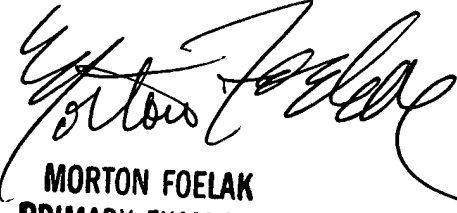
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

The term "hydrazide" in claim 1 does not encompass terms such as "azodicarbonamide" and "diphenylozide" (which is misspelled) and should read "diphenylazide". "Hydrazides" do not red on "azides" and therefore claim 1-14 are indefinite in this regard.

Claims 1-14 are rejected as being indefinite in expression "modified ethylene copolymer". It is not clear what applicants intend to include in the recitation of the term "modified"

Any inquiry concerning this communication should be directed to Morton Foelak at telephone number (703) 308-2442.

M.F.
March 12, 2001


MORTON FOELAK
PRIMARY EXAMINER